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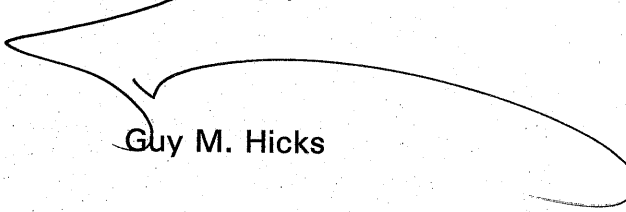
Hon. Sara Kyle, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37238

Re: *Petition to Suspend BellSouth "Welcoming Reward" Tariff and Open a  
Contested Case Proceeding*  
Docket No. 03-00060

Dear Chairman Kyle:

Enclosed are the original and fourteen copies of BellSouth's Response to Request to Suspend BellSouth Tariff. BellSouth respectfully requests that the Authority approve this pro-competitive tariff on Monday. This is an important matter, and BellSouth appreciates your review of its Response. Copies of the enclosed are being provided to counsel for petitioners.

Very truly yours,

  
Guy M. Hicks

GMH:ch

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
Nashville, Tennessee

In Re: *Petition to Suspend BellSouth "Welcoming Reward" Tariff and Open a Contested Case Proceeding*

Docket No. 03-00060

**BELLSOUTH TELECOMMUNICATIONS, INC.'S RESPONSE**  
**TO REQUEST TO SUSPEND BELLSOUTH TARIFF**

BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits its Response to the *Petition to Suspend BellSouth's "Welcoming Reward" Tariff and Open a Contested Case Proceeding* filed by Access Integrated Networks, Inc., Cinergy Communications Company, Xspedious Corporation, and AT&T Communications of the South Central States, Inc. ("the four CLECs"). As explained below, the Tennessee Regulatory Authority (the "TRA" or the "Authority") should deny the *Petition to Suspend BellSouth's "Welcoming Reward" Tariff*. The TRA should also exercise its discretion and decline to convene a contested case. By filing this petition, the four CLECs are simply attempting to insulate all CLECs' Tennessee businesses from competition by BellSouth. CLECs should not be able to delay or derail pro-competitive, customer-friendly tariffs based on conclusory allegations that are without merit as a matter of law.

On January 22, 2003, the four CLECs filed a Petition asking the Authority to suspend a tariff that is without question good for business customers. The 2003 *Welcoming Reward* tariff provides \$100-per-line credits to new business

customers.<sup>1</sup> Contrary to the four CLECs' claims, there is nothing discriminatory or anti-competitive about the 2003 *Welcoming Reward* tariff. Nor is there anything improper about winback offerings.<sup>2</sup>

The Petition filed by the four CLECs conveniently ignores the fact that the Federal Communications Commission ("FCC") has specifically endorsed winback offerings as being pro-competitive. BellSouth cannot say it any more plainly than the FCC said it: "once a customer is no longer obtaining service from the ILEC, the ILEC must compete with the new service provider to obtain the customer's business. We believe that such competition is in the best interest of the customer and see no reason to prohibit ILECs from taking part in this practice." See Order on Reconsideration and Petitions for Forbearance (Order No. 99-223) in CC Docket No. 96-149 at ¶70 (emphasis added).

To suggest, as the four CLECs do, that it is somehow discriminatory or anti-competitive for BellSouth to offer more attractive pricing to new customers, as in the case of *Welcoming Reward*, or to customers it has already lost to competition, as in the case of winbacks, is to turn the notion of competition on its head. BellSouth, like the CLECs, must be free to offer discounted pricing or offer incentive rewards to compete for discrete groups of customers. This is the

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<sup>1</sup> On January 3, 2003, BellSouth filed its tariff to introduce the *Welcoming Reward Program*. The *Welcoming Reward Program* provides a one-time up-front cash credit reward to new BellSouth customers in rate group 5 who sign a 12-month contract within the 90-day promotion period (February 3 through May 2, 2003). Customers are provided a one-time \$100-per-line credit. See proposed General Subscriber Services Tariff ("GSST") A.13.90.16.

<sup>2</sup> Because the CLECs attack this tariff as a "winback", BellSouth will explain that *Welcoming Reward* is available to new business customers, not just former CLEC customers and is therefore not a winback. BellSouth will also demonstrate that winbacks themselves are appropriate responses to competition.

essence of competition. The 2003 *Welcoming Reward Program* is itself evidence that the pro-competitive policies of the Authority are working in Tennessee.

**I. BASIC ASSUMPTIONS UNDERLYING THE CLECS' ARGUMENT ARE INCORRECT.**

The four CLECS claim that the 2003 *Welcoming Reward Program* offers rewards to business customers "who currently receive local telephone service from CLECs but agree to switch their service to BellSouth." (See Petition at p. 1.) As clearly stated in the tariff, the credit rewards are available to any new BellSouth customer in rate group 5.<sup>3</sup> Section A.13.90.27A.1 states that "in order to qualify for the 2003 *Welcoming Reward Program*, new BellSouth customers must be located in rate group 5 and have aggregate annual billing, per state of BellSouth services, not exceeding \$36,000 at the time of enrollment." (Emphasis added.) For example, if a business moves its operations from Dallas, Texas to Memphis, Tennessee or simply opens a new branch or office in Memphis, the customer is eligible to receive the benefits of the tariff. Contrary to the four CLECS' claims, therefore, the tariff is not limited to former CLEC customers.

The four CLECs next claim that there is something unique and groundbreaking about this tariff. ("To Petitioners' knowledge, this is the first time in three years that BellSouth has proposed a "win back" type tariff in Tennessee." (See Petition at p. 1.) Once again, the four CLECs are mistaken. The 2003

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<sup>3</sup> The four CLECS do not challenge the rate group 5 criteria. This is not surprising given the fact that the Authority has properly approved a number of tariffs that are limited to specific rate groups. See, for example, BellSouth's *Basic Service Program* A.13.90.7 and BellSouth's *2003 Key Customer Program* A.13.90.23. Such criteria make perfect sense given the fact that CLECs often focus their marketing efforts in urban areas.

*Welcoming Reward* tariff is not limited to "winbacks", nor is it the first tariff for "new customers". In July, 2002, BellSouth's *Simple Solutions Program* went into effect in Tennessee without CLEC opposition. Like the *Welcoming Reward Program*, the *Simple Solutions Program* is available to new customers.<sup>4</sup>

Next, the four CLECs state that BellSouth's tariff is "the kind of 'winback' promotion that has raised concerns in a number of jurisdictions." (See Petition at p. 2.) Unable to come up with any FCC decisions or public service commission orders in BellSouth's nine-state region prohibiting winbacks or otherwise supporting its position, the four CLECs submitted copies of two orders, one from the Minnesota Public Service Commission and one from the Kansas Public Service Commission.<sup>5</sup>

BellSouth respectfully submits that neither order should be relied upon by the Authority. The Kansas order is procedural only – it schedules workshops and sets a procedural schedule, both of which are unnecessary in this case. The Minnesota order is poorly reasoned, impedes competition, and is contrary to FCC Orders and Tennessee law. Moreover, the order is easily distinguishable on several grounds. First, according to the Minnesota PSC, Qwest's tariff was anti-competitive because

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<sup>4</sup> Under the *Simple Solutions Program*, new business customers with billed revenue between \$75 and \$3,000 that sign 24- or 36-month contracts receive a reward equal to the line connection charges in addition to discounts on monthly recurring charges. See GSST A.13.90.16.

<sup>5</sup> The four CLECs also attached to the Petition a purported matrix of complaints brought against BellSouth regarding winbacks. The CLECs fail to mention that none of the proceedings resulted in the suspension or denial of a tariff similar to the 2003 *Welcoming Reward* tariff. Moreover, the third column of the matrix, which summarizes what PSCs have done in response to CLEC complaints, actually supports BellSouth's position. It shows that the PSCs have not suspended or prohibited winback offerings. Rather, the PSCs' general response to winback complaints has been to require "cooling off" periods after a customer has begun receiving service from a CLEC before an ILEC may seek to winback the customer.

it gave "unbridled discretion to decide how much to offer any given customer." (*Order* at p. 7.) The *Welcoming Reward* tariff allows no such discretion – new business customers receive a credit of \$100 per line, period. Second, the Minnesota PSC states that "when pursued by a monopolist," the Qwest tariff as unreasonably discriminatory. (*Order* at p. 9.) BellSouth, of course, is not a monopolist, having lost approximately one-third of its business customers in Tennessee to CLEC competition. Moreover, BellSouth, unlike Qwest in Minnesota, has received approval of its 271 application. Third, the Qwest tariff, unlike the 2003 *Welcoming Reward* tariff, was available to former CLEC customers only.

What the four CLECs conveniently fail to mention in their Petition is that BellSouth tariffs and promotions providing rewards to both new customers or former customers have been approved by public service commissions in all nine of BellSouth's states. Moreover, the FCC and the vast majority of public service commissions throughout the United States have properly recognized that winbacks are a reasonable and appropriate response to competition and are good for consumers. For example, the Public Service Commission ("PSC") of South Carolina ruled that BellSouth's "Welcome Back! Win Back!" promotion, which was available only to former customers of BellSouth who were receiving services from a competitor, was neither discriminatory nor anticompetitive. The PSC noted that the tariff applies equally to similarly-situated customers who enter the marketplace by switching carriers, and that a winback promotion is similar to a contract service arrangement ("CSA") which is offered to a customer in response to competition or

in response to a competitive offer. The South Carolina PSC approved the winback tariff, noting that "we agree with the FCC that winbacks are useful as competitive tools ...."<sup>6</sup>

The four CLECs' suggestion that BellSouth's agreement to a settlement in June, 2000 with respect to the *Welcome Back! Win Back!* promotion somehow demonstrates that the TRA should have "concerns" about BellSouth's pending tariff is also misplaced. First, BellSouth negotiated the settlement in that proceeding to avoid the substantial delay that would have likely ensued had the CLECs been allowed by the prior TRA to embark on a full blown contested case proceeding. Second, there is nothing in the settlement that binds BellSouth with respect to future tariffs. Third, circumstances have changed dramatically since June of 2000 when the settlement agreement was reached. For example, the settlement preceded the endorsement by the U.S. Department of Justice, the TRA and FCC of BellSouth's 271 application. It is now beyond dispute that BellSouth's markets are open to competition and that competition has taken hold in Tennessee. Fourth, unlike the 2003 *Welcoming Reward Program*, the Winback Tariff, as proposed, was available to former CLEC customers only<sup>7</sup>. Finally, the four CLECs, while asking

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<sup>6</sup> See October 29, 2001 Order Ruling on Complaint at p. 13 and December 9 2002 Order Granting in Part and Denying in Part Petition in Docket No. 2000-3789-C, copies of which are attached. The South Carolina Commission also ruled that in the future, BellSouth must wait 10 business days after a customer has begun receiving services from a competitor before BellSouth makes a winback offer to that customer. BellSouth has already voluntarily agreed to a 10-day "cooling off" period in Tennessee.

<sup>7</sup> While that fact alone cannot constitute a basis for suspending this tariff because this tariff is not so limited, BellSouth's remarks in this regard should not be taken to mean that BellSouth does not believe that a tariff offering limited solely to former customers would be inappropriate. The

the Authority to immediately suspend 2003 *Welcoming Reward*, fail to mention that NEXTLINK and BellSouth reached an agreement in the 2000 complaint proceeding allowing the winback tariff to go into effect pending resolution of the complaint.<sup>8</sup>

The four CLECs also claim that BellSouth's responses to August, 2001 Staff data requests indicate that "BellSouth itself is well aware of the potential problems raised by such offerings and the Authority's concerns." (See Petition at p. 3.) This is another red herring. In fact, BellSouth simply answered the questions the Staff asked. As acknowledged in the CLECs' Petition, BellSouth stated that, as of October 2, 2001, "... no BellSouth regulated offering in Tennessee is available solely to former BellSouth customers." The CLECs' attempt to transform BellSouth's good faith responses to the Staff's questions into some sort of an admission of "concern" is clearly misplaced.

## **II. THE FCC HAS SPECIFICALLY ENDORSED WINBACK OFFERINGS AS BEING PRO-COMPETITIVE.**

Both competition and consumers benefit from offerings like the 2003 *Welcoming Reward Program*. Such programs, as well as winback offerings are normal market responses in competitive markets. Moreover, such offerings help

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essence of the telecommunications landscape today is competition, and it is just, reasonable and fair that BellSouth should be allowed to compete for specific groups of customers.

<sup>8</sup> See *Order Approving Initial Order of Hearing Officer Accepting Settlement Agreement and Approving Revised Tariff*, entered October 2, 2000 in Docket No. 00-00391, at p. 2. ("As to suspending the tariff, NEXTLINK and BellSouth reached a verbal agreement that the tariff should go into effect on June 15, 2000, and BellSouth would advise any customers signed up through the tariff of the Authority's review of the program.")



advance competition in the market, they benefit customers, and they offer economic and public policy benefits.

It should come as no surprise, therefore, that the FCC has specifically endorsed winback offerings as pro-competitive. Originally, in a 1998 order on customer proprietary network information ("CPNI"), the FCC prohibited carriers from using or accessing CPNI to regain the business of a customer that had switched to another provider.<sup>9</sup> The following year, however, the FCC lifted this restriction on winback activities, expressly finding that "winback campaigns are consistent with Section 222(c)(1)"<sup>10</sup> of the federal Act.<sup>11</sup> In that order, the FCC stated that "all carriers should be able to use CPNI to engage in winback marketing campaigns to target former customers that have switched to other carriers," and it added that "we are persuaded that winback campaigns are consistent with Section 222(c)(1) and in most instances facilitate and foster competition among carriers, benefiting customers without unduly impinging upon their privacy rights."<sup>12</sup>

More specifically, the FCC noted that *restrictions on winback activities "may deprive customers of the benefits of a competitive market,"* explaining that:

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<sup>9</sup> Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information and Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket Nos. 96-115 and 96-149, Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061, ¶85 (1998).

<sup>10</sup> This section of the Act governs how carriers "use, disclose, or permit access to" CPNI. See 47 U.S.C. §222(c)(1).

<sup>11</sup> See *Implementation of the Telecommunications Act of 1996; Telecommunications Carriers' Use of Customer Proprietary Network Information; Implementation of the Non-Accounting safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended*, CC Docket No. 96-115 and 96-149, Order on Reconsideration and Petitions for Forbearance, 14 FCC Rcd 14409, ¶67 (1999) (the 'CPNI Reconsideration Order').

<sup>12</sup> *Id.* at ¶67.

*Winback facilitates direct competition on price and other terms, for example, by encouraging carriers to "out bid" each other for a customer's business, enabling the customer to select the carrier that best suits the customer's needs.*

Some commenters argue that ILECs should be restricted from engaging in winback campaigns, as a matter of policy, because of the ILEC's unique historic position as regulated monopolies. Several commenters are concerned that the vast stores of CPNI gathered by the ILECs will chill potential local entrants and thwart competition in the local exchange. We believe that such action by an ILEC is a significant concern during the time subsequent to the customer's placement of an order to change carriers and prior to the change actually taking place. Therefore, we have addressed that situation in Part V.C.3, *infra*. *However, once a customer is no longer obtaining service from the ILEC, the ILEC must compete with the new service provider to obtain the customer's business. We believe that such competition is in the best interest of the customer and see no reason to prohibit ILECs from taking part in this practice.*<sup>13</sup>

It would indeed be a strange turn of events if "competition" were defined only as CLECs taking BellSouth customers. Logic dictates that competition has to be a two-way street. Consistent with the FCC's Order and simple logic, the Authority should allow BellSouth to offer the *Welcoming Reward Program*.

### **III. NEITHER THE 2003 WELCOMING REWARD PROGRAM NOR WINBACKS ARE UNDULY DISCRIMINATORY.**

The CLECs' tactics of levying "discrimination" attacks against BellSouth offerings that are designed to provide lower rates and additional competitive choices to Tennessee consumers are not new. Instead, they are merely a continuation of the same tactics certain CLECs employed – unsuccessfully – in the

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<sup>13</sup> *Id.* at ¶¶69-70 (emphasis supplied).

Bank and the Store Proceedings.<sup>14</sup> The CLECs are as wrong now as they were then.

As BellSouth explained during the Bank and the Store Proceedings, Tennessee law does not prohibit a public utility from offering different rates -- it only prohibits a utility from offering different rates to similarly situated customers. In *Southern Ry. Co. v. Pentecost*, 330 S.W.2d 321, 325 (Tenn. 1969), for example, the Tennessee Supreme Court held that a railroad did not engage in undue discrimination by charging some customers \$18 per car while charging a nearby customer \$33 per car. The Supreme Court explained that carriers

are only bound to give the same terms to all persons alike under the same conditions and circumstances, and *any fact that produces an inequality of condition and a change of circumstances justifies an inequality of charge.*

*Id.*

With regard to winbacks, the "inequality of condition" or "change of circumstances" is dramatic: far from simply having competitive alternatives available to them, the customers to whom this tariff applies have actually taken advantage of a competitive offer and are receiving services from a competitor. Clearly, customers who have left BellSouth and who are receiving services from a competitor are in a much different situation than customers who have not.

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<sup>14</sup> See, In Re: Proceeding for the Purpose of Addressing Competitive Effects of Contract Service Arrangements Filed by BellSouth Telecommunications, Inc. in Tennessee, Docket No. 98-00559; BellSouth Telecommunications, Inc.'s Tariff to Offer Contract Service Arrangement TN98-6766-00 for Maximum 13% Discount on Eligible Tariffed Services, Docket No. 98-00210; BellSouth Telecommunications, Inc.'s Tariff to Offer Contract Service Arrangement KY98-4958-00 for an 11% Discount on Various Services, Docket No. 98-00244. (The "Bank" and the "Store" case.)

Similarly, with regard to the *Welcoming Reward Program*, the "inequality of condition" or a "change of circumstances" is also dramatic: new (potential) customers are differently situated than existing customers. Certainly existing customers and non-customers (potential customers) cannot be said to be similarly situated. In the face of competition, BellSouth must make greater efforts to obtain new customers than to retain existing ones. As a matter of state law, therefore, BellSouth's tariff is not unduly discriminatory.

At the federal level, section 202(a) of the Telecommunications Act of 1934, as amended, prohibits a carrier from making any "unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services." Nor can a carrier "give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage."<sup>15</sup> As the FCC has stated, however, the Act does not bar *all* rate discrimination, only "unjust and unreasonable discrimination."<sup>16</sup>

In fact, the FCC has long used the *competitive necessity* doctrine in weighing whether price differences may be justified when carriers seek to apply particular rates in particular situations or for particular customers or groups of customers.<sup>17</sup> The FCC has repeatedly ruled that carriers may respond to specific

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<sup>15</sup> See 47 U.S.C. § 202(a).

<sup>16</sup> See *Connecticut Office of Consumer Counsel, et al. v. AT&T Communications*, Memorandum Opinion and Order, File No. E-88-061, 4 FCC Rcd 8130 (1989) at para. 12.

<sup>17</sup> See *inter alia*, *American Telephone & Telegraph Co. Charges, Regulations, Classifications, and Practices for Voice Grade/Private Line Service (High Density—Low Density)* Filed with

competitive threats with rates or offerings designed to meet those threats. Moreover, the competitive necessity doctrine has been widely applied in similar situations by other agencies to allow regulated companies to meet specific competitive threats with offerings targeted to win back or retain customers. In addition, promotional offerings have also been endorsed as competitively desirable and even exempted from general costing rules.<sup>18</sup> Promotions that address the threat that ILECs face from rival carriers are an example of offerings to targeted groups of customers that are justified under the competitive necessity doctrine. As a matter of federal law, therefore, BellSouth's tariff is not unduly discriminatory.

#### **IV. THERE IS NOTHING IMPROPER ABOUT THE USE OF A 12-MONTH CONTRACT.**

Continuing to grasp at straws, the four CLECs claim that "the requirement that customers must enter into a long term agreement with BellSouth in order to receive the discount is also anti-competitive." (Petition, at p. 4.) The "long term agreement" the four CLECs refer to is a 12-month agreement, a shorter term contract than the CLECs themselves typically require in both their special contract/CSAs and tariff term plans. Moreover, the termination liability paragraph in BellSouth's 2003 *Welcoming Reward Program* is fully consistent with the Authority-approved termination liability provisions in BellSouth's tariffs. Numerous

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*Transmittal No. 11891*, Interim Decision and Memorandum Opinion and Order, Docket No. 19919, 55 F.C.C. 2d 224 (1975); and *in the matter of American Telephone and Telegraph Co., Revisions of Tariff FCC No. 260 private Line Services, Series 5000 (Telpak)*, Memorandum Opinion and Order, Docket No. 18128, 61 F.C.C. 2d 587 (1976).

<sup>18</sup> See *Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Order and Notice of Proposed Rulemaking, 8 FCC Rcd at 3717 (1993).

BellSouth tariffs and promotions approved by the Authority include the same termination liability provisions. Moreover, It is difficult to fathom how the CLECS can support existing TRA-approved termination liability provisions in the CSA rulemaking proceeding, while at the same time claiming them to be somehow anti-competitive in connection with BellSouth's tariff. It is disingenuous, to say the least, for the four CLECs to complain about a 12-month contract with TRA-approved termination liability provisions.

**V. THE 2003 *WELCOMING REWARD PROGRAM* IS AVAILABLE FOR RESALE AND THERE IS NO "PRICE SQUEEZE".**

The FCC has recognized that promotions may serve pro-competitive purposes that would be undermined if they had to be made available at the promotional rate minus the avoided cost discount. To preserve incumbents' incentives to offer such promotions, the FCC held that short-term promotional prices – those promotions that last for no more than 90 days – do not constitute retail prices and thus are not subject to the statutory wholesale rate obligation.<sup>19</sup> Accordingly, the underlying service, as opposed to the short-term promotion, must still be made available for resale, but only at the normal retail (tariffed) rate minus the statutory wholesale discount. The TRA has required that long-term promotions, defined as promotions that are offered for more than 90 days, should be made available for resale at the stated tariff rate, less the wholesale discount or

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<sup>19</sup> See 47 C.F.R. §51.613(a)(2).

at the promotion rate, without the wholesale discount.<sup>20</sup> The TRA order does not require that short-term promotions, defined as promotions that are offered for 90 days or less, be subject to such wholesale discounts. The TRA also stated that the benefits of the promotion must be realized within the time period of the promotion.<sup>21</sup>

The *Welcoming Reward Program* is available for 90 days, from February 3 through May 2, 2003. (See A.13.90.27A.) It is therefore a short-term promotion. Also, all of the benefits of the promotion, the \$100-per-line credits, are awarded up front, "at the time BellSouth becomes the local service provider", and therefore within the time period of the promotion. (See A.13.90.27B.1.) As stated in the tariff, the Program is available for resale. Consistent with the FCC's Rule and the TRA's Order, it will be available for resale at the retail rate. The wholesale discount does apply to the underlying services, such as a 1FB business line, but not to the \$100 credit. The CLECs are free to resell the underlying services with the wholesale discount and offer credits or other rewards just as BellSouth does.

In addition to the opportunity to resell this tariff, CLECS are free to compete against BellSouth by using their own facilities or by using TELRIC-priced unbundled network elements ("UNEs"). The retail rates under the *Welcoming Reward Program* are higher than the rates a CLEC would pay for the TELRIC priced UNEs necessary

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<sup>20</sup> BellSouth has since agreed to make long-term promotions available so that CLECs will have the benefit of both the promotional discount and the wholesale discount rate previously ordered by the Authority. (See John Ruscilli affidavit submitted to the FCC in connection with BellSouth's Tennessee/Florida application, at pp. 64-65.)

<sup>21</sup> See *Second and Final Order of Arbitration Awards*, entered January 23, 1997 in Docket No. 96-01152, at pp. 14-16.

to create the same services. Contrary to the four CLECs' conclusory concern, therefore, there is no "price squeeze" created by this tariff.

**VI. THE TRA SHOULD EXERCISE ITS DISCRETION TO DENY THE FOUR CLECS' PETITION.**

The CLECs' filing does not require the TRA to convene a contested case. The Supreme Court of Tennessee has stated that "the TRA has the power to convene a contested case hearing if it chooses to exercise the authority," *Consumer Advocate Div. v. Greer*, 967 S.W.2d 759, 763 (Tenn. 1998), and it held that §65-5-203(a) does not impose a mandatory duty upon the TRA to convene a contested hearing in every case upon the filing of a written complaint." *Id.* at 764. As explained above, the arguments asserted by the four CLECs in their Petition are without merit as a matter of law. The TRA, therefore, should not allow the four CLECs to insulate themselves from competition by filing a Petition that raises meritless legal issues.

Moreover, if the Authority convened a contested case proceeding every time a local exchange carrier filed a petition against another carrier's proposed tariff or promotion, the tariffs and promotions filed by carriers competing with one another could grind to a halt, to the detriment of customers who would benefit from those tariffs and promotions.

**CONCLUSION**

As demonstrated above, to convene a contested case proceeding in this case is unnecessary and will needlessly delay the benefits of the tariff to Tennessee



businesses. The *Welcoming Reward* tariff is neither anti-competitive nor unduly discriminating. It is pro-competitive. The Authority should dismiss the petition filed by the four CLECs and approve BellSouth's tariff, thereby allowing new business customers additional benefits from competition.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

By: 

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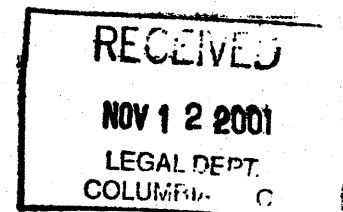
BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA

DOCKET NO. 2000-378-C – ORDER NO. 2001-1036

OCTOBER 29, 2001

IN RE: Southeastern Competitive Carriers	)	ORDER RULING ON
Association, NewSouth Communications	)	COMPLAINT
Corporation and TriVergent Communications	)	
	)	
Complainants/Petitioners,	)	
	)	
vs.	)	
	)	
BellSouth Telecommunications, Inc.,	)	
Respondent	)	

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Complaint of the Southeastern Competitive Carriers Association (SECCA), NewSouth Communications Corporation (NewSouth), and TriVergent Communications (TriVergent) (collectively, the Complainants) against BellSouth Telecommunications, Inc.(BellSouth). The Complaint was filed under the authority of S.C. Code Ann. Section 58-9-576 (B)(5) (Supp. 2000) and Order No. 2000-676, our Order Ruling on Guidelines. The Complainants take issue with BellSouth's Win Back Promotion, which offers discounts to business customers being served by competitive local exchange carriers (CLECs) who return to BellSouth. The Complainants allege that BellSouth is abusing its market position, since the promotion solely targets customers of CLECs, and is anti-competitive. BellSouth denies the substantive allegations of the Complaint.



Accordingly, this matter was scheduled for hearing on February 22, 2001 in the offices of the Commission. The Honorable William Saunders, Chairman, presided. Frank Ellerbe, III, Esquire, represented the individual Complainants, Southeastern Competitive Carriers Association and NewSouth Communications Corporation. John J. Pringle, Jr., Esquire, represented TriVergent Communications. The Complainants presented the testimony of Jake E. Jennings, David K. Hudson, and Jack Lovegren. BellSouth Telecommunications, Inc was represented by Caroline N. Watson, Esquire, William F. Austin, Esquire, and Patrick Turner, Esquire. BellSouth presented the testimony of Cynthia K. Cox and Robert H. Sellman, III. The Commission Staff (the Staff) was represented by F. David Butler, General Counsel. The Staff presented the testimony of Joseph W. Rogers.

David K. Hudson of NewSouth testified for the Complainants. (Tr. at 13-50.) Hudson testified that the Win Back Promotion is designed to target customers of CLECs who were former BellSouth customers. The two aspects of the promotion were, first, a waiver of line connection charges for customers responding to the promotion, and, second, substantial discounts based on monthly billed revenues and the length of commitment that customers are willing to make to BellSouth. The discounts can be as much as 18% for customers with monthly total bill revenues of \$5,000-\$10,000 committing to BellSouth for a period of 36 months. Hudson stated that this program would be devastating to the CLECs, and that it hurts competition by making it difficult for a company like NewSouth to grow. The promotion, according to Hudson, lures away a CLEC's existing customers. Hudson also states that the promotion chills new entrants,

and gives BellSouth a tool to avoid lowering prices to its vast group of customers who have not yet chosen to switch to another provider. The end result of the promotion, according to Hudson, is detrimental to competition.

Jake Jennings of NewSouth also testified. (Tr. at 50-85.) Jennings alleged that the promotions are unreasonably discriminatory and anti-competitive. Jennings urged the Commission to examine the goals of rapid competition in the local exchange market and all telecommunications markets, investment and innovation in the telecommunications market, and universal service. Jennings stated that BellSouth is still a monopoly provider, holding over 90% of the market share within its service territory in South Carolina. In addition, Jennings alleged that BellSouth is the sole supplier of network elements to CLECs. Because of these and other factors, Jennings stated that BellSouth is able to exert market power when competing with CLECs.

Jennings stated a belief that BellSouth's promotion is discriminatory, since it is only offering the promotion to business customers that have switched to CLECs, not all business customers. Jennings further stated a belief that the promotion should be offered to all business customers. Additionally, Jennings noted that the FCC has held that volume and term discounts should be made available to any customer with sufficient volumes or willing to commit to a given term. Further, Jennings opined that BellSouth's promotion discourages competition in the local exchange market. Lastly, Jennings urged the Commission to adopt safeguards that prevent BellSouth from abusing its market power within its local exchange area.

TriVergent presented the testimony of Jack Lovegren. (Tr. at 65-93.) Lovegren testified that the Win Back Promotion would have a harmful effect on the development of a competitive market for local exchange services in South Carolina. Lovegren noted that 99% of the customers that TriVergent seeks to serve have a prior relationship with BellSouth. BellSouth's Contract Service Arrangements, according to Lovegren, are provided to customers at rates that TriVergent cannot effectively counter without taking a loss. Lovegren goes on to describe BellSouth's "Key Customer" Program. In order to receive the benefits of this program, Lovegren notes that a customer must obligate itself to BellSouth for a period of one to three years. There is termination liability if a customer terminates this program early.

Lovegren opined that the Win Back Promotion is harmful to the development of meaningful local exchange competition, because BellSouth, with its history of prior relationships with customers, unlimited ability to offer deals and discounts, and financial wherewithal already enjoys advantages that will enable it to outbid a startup competitor, even without the existence of the Win Back Promotion. The CSA authority, in combination with promotions such as the Key Customer program and other promotions enables BellSouth to substantially preserve its market share and steadily increase its South Carolina revenues, according to Lovegren. Lovegren further stated a belief that the ability to target specifically those customers whom CLECs have been successful in garnering simply goes too far.

In addition, Lovegren disagreed with the notions propounded by BellSouth that the Win Back Promotion is the type of competition envisioned by the

Telecommunications Act of 1996, and that the Promotion is simply part of BellSouth's efforts to compete in the marketplace. Lovegren noted that the Public Utility Commission of Texas recognized the effect that Win Back programs can have on the development of a competitive market for local exchange services, and conditioned a Bell's entrance into the interLATA market on its willingness to forego the use of Win Back programs. Lovegren also states that BellSouth has withdrawn its Win Back Promotions in Tennessee, North Carolina, and Alabama before implementation.

BellSouth presented the testimony of Robert H. Sellman, III, Assistant Vice President Sales and Service, South Carolina and North Carolina, for BellSouth's Small Business Services organization. (Tr. at 93-158.) Sellman first described the Promotion at issue. The Promotion was filed with the Commission in May of 2000, and had expired at the time of the hearing on the matter. According to Sellman at the time of the hearing, twenty-five customers originally signed up for the promotion, and twenty-three were still participants at the time of the hearing. Subsequent to the hearing, BellSouth requested that its testimony in this regard be amended to show forty-nine participating customers. The Win Back Promotion provided limited discounts based on term agreements to previous BellSouth customers who wished to return to BellSouth for local telephone service. The Promotion provided eligible customers with monthly savings of 8% to 18% off their monthly total billed revenue, depending upon whether a customer selected a term agreement of 12, 24, or 36 months. The Promotion was available to previous BellSouth business customers who had elected to go to another service provider within the past two years, who chose to return to BellSouth, and who met certain terms and

conditions. Generally, the Promotion was available to all business customers in South Carolina who were receiving service from another local exchange carrier and who met the other eligibility requirements for the Promotion. To be eligible, the business customer had to have monthly total billed revenue of \$70-\$10,000 when they left BellSouth and they had to be willing to sign a term agreement of 12, 24, or 36 months.

Sellman stated that BellSouth introduced the Win Back Promotion as a direct response to competition in the business market in South Carolina. Sellman noted that if BellSouth were somehow prohibited from attempting to win back customers who have left it for another carrier, those customers would be deprived of a competitive alternative that otherwise would be available to them. Sellman further stated that even after applying the deepest discount offered under the promotion, BellSouth's prices are still above most of the tariffed prices its competitors offer for comparable services. Sellman did note that, even with the discounts, the customers under the promotion pay more than the cost of the services. Sellman notes that it often takes more to win back a customer that has established service with a different provider than it does to keep a customer who already has service with BellSouth. This mitigated against offering the promotion to BellSouth's existing customers.

Sellman testified that BellSouth has lost anywhere from 20% to nearly 25% of its market share in South Carolina and it is continuing to lose market share at a steadily increasing rate. Sellman states that BellSouth must be able to compete to win back customers lost to competition, and that it is unfair for CLECs to compete for BellSouth's customers and to then attempt to insulate those customers from competition by

BellSouth. Sellman stated that the consumers of South Carolina are the ultimate beneficiaries of competition, and offers such as this Promotion and the customers in South Carolina who have signed up for this Promotion and are receiving its benefits, should be allowed to continue to receive those benefits. Sellman summarized by stating that this Commission should rule that it is appropriate for BellSouth to engage in Win Back activities like this Promotion.

Cynthia K. Cox also testified for BellSouth. (Tr. at 159-196.) Cox discussed the discrimination and anti-competition allegations contained in the Complaint in this matter. Cox stated that BellSouth's Win Back Promotion was a reasonable response to the actual competition that exists in South Carolina. First, Cox noted that Win Back Promotions are responses to competition from rivals and as such, they help to advance competition in the market. Cox testified that Win Back Promotions are means that BellSouth uses to respond to a specific competitive threat in a target, nondiscriminatory manner. Second, Cox testified that customers are the beneficiaries of the Win Back Promotions. Third, such Promotions have tremendous economic and public policy benefits, according to Cox.

Cox addressed Complainant witness Jennings' allegation that the Promotion violates the FCC's criteria. Cox stated that Jennings' focus is on the portion of the FCC Order that states that incumbent LECs "must make them available to any customer," but ignores the language concerning "significant volumes or willing to commit to a given term." Further, Cox notes that the FCC discussed Win Back efforts by incumbent local exchange carriers (ILECs) in its September 3, 1999 Order on Reconsideration and Petitions for Forbearance, CC Docket No. 96-149 (Order No. 99-223). Cox states that the



FCC noted in that Order that “restrictions on winback activities may deprive customers of the benefits of a competitive market.” The Order went on to state that “Winback facilitates direct competition on price and other terms, for example, by encouraging carriers to “out bid” each other for a customer’s business, enabling the customer to select the carrier that best suits the customer’s needs.” See Paragraph 69.

Cox goes on to state that the Promotion is consistent with BellSouth’s promotional tariff provisions approved by this Commission. Further, one of the eligibility criteria for the Promotion is that the subscriber must be a former BellSouth customer. All former BellSouth customers that meet the eligibility criteria have an equal opportunity to participate in the Promotion, according to Cox. Therefore, in Cox’s opinion, targeting a promotion to such customers is authorized by BellSouth’s tariff. The Promotion is also consistent with S.C. Code Ann. Section 58-9-576(B)(5) (Supp. 2000), according to Cox.

The Commission Staff presented the testimony of Joseph W. Rogers, who is Coordinator of Telecommunications Tariffs for the Commission’s Utilities Department. (Tr. at 197-219.) Rogers testified that on May 30, 2000, BellSouth filed a promotional offering called Welcome Back Winback and Winback Installation Program with the Commission. Staff found no improprieties with the promotional material as the result of its review of the promotions. The promotions were published on the Commission’s June 5, 2000, Utilities Department Agenda as Items 6 and 7 on the “Advised” section of the agenda.

Rogers testified that a promotion is very similar to a sale on a particular product or products in the retail private sector. It is an incentive offered by a telecommunications

carrier by offering a discount for a period of time or a waiver of non-recurring fees normally required for purchase of services. Rogers noted that the purpose of a promotion is to attract customers and to gain business.

Rogers opined that BellSouth had the authority to offer the Promotion in question to its customers in South Carolina, pursuant to Section A2.10.1 (A)(B) of BellSouth's General Subscriber Service Tariff. That section states that BellSouth may offer special promotions on new or existing services/products for limited periods. It further states that promotions will be offered on a completely non-discriminatory basis to all subscribers meeting eligibility criteria for each promotion. Rogers noted that eligibility criteria were defined in the Promotion under consideration. In this case, the promotion is available to former BellSouth customers who had left BellSouth for another local service provider and who want to return to BellSouth. Discounts, based upon monthly billed revenues and term periods of 12, 24, or 36 months, are uniform. To clarify, the promotion has a consistent criteria menu for customer qualification, according to Rogers. Rogers noted that the Win Back Promotion does not allow for so-called cherry-picking of subscribers to whom to offer the service.

Rogers further testified that Staff's review of the Promotion found it to be identical to a Contract Service Arrangement (CSA) which is offered to a customer in response to competition or in response to a competitive offer. Rogers expressed the opinion that the Win Back Promotion is a CSA in the format of a promotion.

Rogers also expressed the opinion that the Win Back Promotion does not impede local competition. A CSA is offered to an individual in response to a competitive

situation. Rogers stated that CSAs are not impediments to competition. Similarly, the Win Back Promotion is offered to customers who have chosen to enter the competitive telecommunications market by "shopping" for a telecommunications provider. BellSouth could acquire a customer from a competing entity with or without the promotion. As BellSouth could offer a CSA to a previous customer in order to regain that customer and his business, Staff expressed the opinion that the Promotion does not impede local competition. In fact, Rogers states that the Promotion may actually promote competition. For example, NewSouth or TriVergent may obtain a BellSouth customer via resale of the Win Back Promotion.

Rogers testified that the Win Back Promotion is not discriminatory and applies equally to similarly situated customers who have entered the competitive marketplace by switching carriers. Since the promotion applies equally to customers meeting the eligibility criteria, the Staff discerns nothing discriminatory about the Promotion.

In summary, Rogers stated that if promotions such as this one are prohibited in South Carolina, then consumers may suffer. Rogers believes that promotions such as the Win Back Promotion could encourage carriers to reduce prices. Further, since a CSA could be used to provide a customer with the same service at the same discounted price as the service provided pursuant to the Win Back Promotion, Rogers fails to see potential harm to the public by the offering of the Promotion. Rogers finally stated that the Promotion is beneficial, in that it may be resold by a competitor of BellSouth, thereby providing another mechanism in the marketplace for consumers to benefit from competitive prices.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The subject of the complaint is the BellSouth Win Back Promotion. The Promotion has two aspects: 1) a waiver of line connection charges for customers responding to the promotion, and 2) substantial discounts based on monthly billed revenues and the length of commitment that customers are willing to make to BellSouth. The Promotion provided eligible customers with monthly savings of 8%-18% off of their monthly total billed revenue, depending upon whether a customer selected a term agreement of 12, 24, or 36 months. The Promotion was available to previous BellSouth business customers who had elected to go to another service provider within the past two years, who chose to return to BellSouth, and who met certain terms and conditions. Generally, the promotion was available to all business customers in South Carolina who were receiving service from another local exchange carrier and who met the other eligibility requirements for the promotion. To be eligible, the business customer had to have monthly total billed revenues of \$70-\$10,000 when they left BellSouth and had to be willing to sign a term agreement of 12, 24, or 36 months with BellSouth. The promotion had expired at the time of the hearing. Tr., Sellman at 100.

2. The Promotion was filed on May 30, 2000 with the Commission, and was published in the "Advised" section of the Commission's June 5, 2000 Utilities Agenda, all according to Commission procedure. Tr., Rogers, at 201.

3. BellSouth has the authority to file such a Promotion as per its General Subscriber Service Tariff, Section A2.10.1(A)(B). The tariff section provides that

promotions will be offered on a completely non-discriminatory basis to all subscribers meeting the eligibility criteria for each promotion. (Tr., Rogers at 202.)

4. The Win Back Promotion is identical to a Contract Service Arrangement (CSA) which is offered to a customer in response to competition or in response to a competitive offer. The Win Back Promotion is a CSA in the format of a promotion. Tr., Rogers at 203.

5. BellSouth had the authority to offer contract service arrangements pursuant to Order No. 84-804 in Docket No. 84-379-C and Order No. 98-1029 in Docket No. 98-378-C.

6. The Win Back Promotion does not impede local competition. The Promotion was available to any customer who left BellSouth and obtained service from a competitive local exchange carrier. CSA's such as the Promotion are offered in response to a competitive situation. The Win Back Promotion was offered to customers who have chosen to enter the competitive telecommunications market by shopping for a telecommunications provider. BellSouth could have acquired customers from competing entities with or without the Promotion. The Win Back promotion may actually promote competition, since New South or TriVergent could obtain a BellSouth customer via resale of the Win Back Promotion. Tr., Rogers, at 204-205. (See also Tr., Cox, at 163.) There is no abuse of market position by BellSouth.

7. The Win Back Promotion is not discriminatory. It applies equally to similarly situated customers who entered the marketplace by switching carriers. The Promotion applies equally to customers meeting the eligibility criteria. Tr., Rogers at 205.

8. The Win Back Promotion does not violate criteria laid out by the Federal Communications Commission. Although complainant witness Jennings asserts otherwise, the FCC in its September 3, 1999 Order on Reconsideration and Petitions for Forbearance, CC Docket No. 96-149 (Order No. 99-223) actually noted that restrictions on winback activities “may deprive customers of the benefits of a competitive market.” Tr., Cox, at 165.

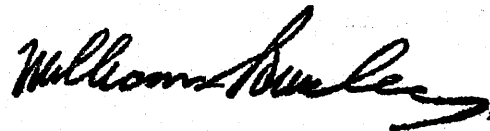
9. The testimony of Jack Lovegren of TriVergent is instructive, however. Lovegren opined that the Win Back Promotion is harmful to the development of meaningful local exchange competition, because BellSouth, with its history of prior relationships with customers, unlimited ability to offer deals and discounts, and financial wherewithal already enjoys advantages that will enable it to outbid a startup competitor, even without the existence of a Win Back Promotion. We do not agree with all of these assertions, however, we do agree that having prior relationships with customers may give BellSouth some slight advantage in the event of a Win Back-type situation. Accordingly, in the future, BellSouth shall be prohibited from engaging in any Win Back activities for ten (10) calendar days from the date that service has been provided to a customer by a competitive local exchange carrier. This prohibition includes the exchange of information within divisions at BellSouth related to notice that certain end users have requested to switch local service providers. Further, BellSouth is prohibited from including any marketing information in its final bill sent to customers that have switched local service providers. We agree with the FCC that Win Backs are useful as competitive tools, however, we believe that the above-stated restrictions may be helpful to at least allow a

consumer to sample a competitive local exchange carrier's service before being re-solicited by BellSouth.

10. The Complaint must be denied and dismissed, since the Win Back Promotion is neither anticompetitive, nor discriminatory, nor is there an abuse of market position by BellSouth, however, BellSouth shall be subject to the restrictions stated above.

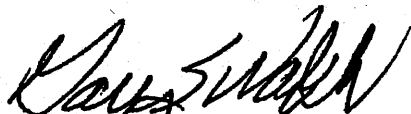
11. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Chairman

ATTEST:



Executive Director

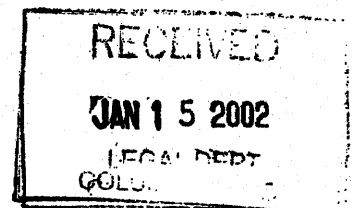
(SEAL)

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2000-378-C - ORDER NO. 2002-2  
DECEMBER 9, 2002

IN RE: Southeastern Competitive Carriers	)	ORDER GRANTING IN
Association, NewSouth Communications	)	PART AND DENYING IN
Corporation and TriVergent Communications,	)	PART PETITION
	)	
Complainants/Petitioners,	)	
	)	
vs.	)	
	)	
BellSouth Telecommunications, Inc.,	)	
	)	
Respondent.	)	
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This matter comes before the Public Service Commission of South Carolina (the Commission) on the Petition for Reconsideration and Clarification of Commission Order No. 2001-1036 filed on behalf of NewSouth Communications, TriVergent Communications, and the Southeastern Competitive Carriers Association (collectively, the Joint Petitioners).

First, the Joint Petitioners note that this Commission, in Order No. 2001-1036, imposed a prohibition on BellSouth from engaging in "Win Back" efforts until its former customers have been receiving service from a competitor for 10 calendar days. While the Joint Petitioners agree with the ruling in principle, they believe that the Order is subject to misinterpretation, and maintain that clarification would be helpful.





The Joint Petitioners note that a competitive local exchange carrier (CLEC) attempting to provide service to a BellSouth customer must first obtain a Letter of Agency (LOA) from the customer, and then submit the LOA to BellSouth's wholesale division along with a request for the Customer's Service Record (CSR). From the time that the LOA is submitted to BellSouth, the Joint Petitioners maintain that BellSouth's wholesale division has information which would be extremely valuable to its retail division in attempting to retain the customer. The Joint Petitioners further assert that, to be effective, the Commission's prohibition on Win Back activities by BellSouth must begin at the time that the LOA is submitted, and that Order No. 2001-1036 intended to impose such a prohibition. Some proposed language in clarification is then suggested.

We agree that clarification is appropriate, and grant said clarification, although we do not adopt the proposed language propounded by the Joint Petitioners. Instead, we hold that the prohibition on the sharing of information among BellSouth divisions found in Order No. 2001-1036 should begin at the time that BellSouth comes into possession of information from the CLEC which would suggest that a specific customer is considering a proposal from the CLEC. We believe that this appropriately clarifies the intent of our prior Order.

Next, the Joint Petitioners allege that Order No 2001-1036 fails to adequately address the issue of whether the Win Back offerings unreasonably discriminate between similarly situated customers. The pertinent statute provides that BellSouth should set rates "on a basis that does not unreasonably discriminate between similarly situated customers." See S.C. Code Ann. Section 58-9-576(B)(5)(Supp. 2001). We have

examined this question, and must conclude, based on the testimony, that the Win Back promotion does not unreasonably discriminate between similarly situated customers. We disagree with the Joint Petitioners belief that, according to the statute, the Order must explain why the two groups of customers are not “similarly situated” in order to arrive at the conclusion that the discrimination is reasonable. The statute does not say that. It only states that rates must be set on a basis that does not unreasonably discriminate between similarly situated customers. We take this to mean that if a Company can state a good reason for a pricing differential on a service between similarly situated customers, then the different rates are reasonable.

We believe that BellSouth has stated a good reason for the price differential between similarly situated customers. In this case, all of the customers involved are similarly situated as business customers. However, the group of business customers eligible for the promotion has left the BellSouth system, while the other business customers have not. The Joint Petitioners claim discrimination, since the business customers still on the BellSouth system are not eligible for the Win Back rate, which is lower. As noted in Order No. 2001-1036 at 6, BellSouth witness Robert H. Sellman, III testified that BellSouth introduced the Win Back Promotion as a direct response to competition in the business market in South Carolina. Sellman also stated that it often takes more to win back a customer that has established service with a different provider than it does to keep a customer who already has service with BellSouth. This mitigated against offering the promotion to BellSouth’s existing customers. (See Sellman testimony, at TR. 93-158.)

Further, Cynthia Cox of BellSouth testified that the Win Back Promotion was a reasonable response to the actual competition that exists in South Carolina from rival companies. (See Cox testimony generally at Tr. 159-196.)

In summary, we think BellSouth has stated a good reason for the price differential between similarly situated customers. Again, most of this discussion was contained in our prior Order, along with citation to additional testimony that supports this holding.

Lastly, the Joint Petitioners allege that Order No. 2001-1036 conflicts with federal law in contravention of the Federal Telecommunications Act. The Joint Petitioners base their allegation on the notion that the non-discrimination obligation of S.C. Code Ann. Section 58-9-576 is the same non-discrimination obligation contained in Section 202 of the Federal Telecommunications Act. Section 202 makes it illegal for any common carrier to make any unjust or unreasonable discrimination in charges to any particular person or class of persons. 47 U.S.C.A. Section 202 (a). The Joint Petitioners allege error and state that this Commission did not address whether the Win Back Promotions involved reasonable discrimination. First, we do not necessarily believe that the Federal and State non-discrimination obligations are the same. However, even if we did, we hold that so-called "reasonable discrimination" exists with the Win Back Promotion under the Federal standard as well as the State standard.


The Joint Petitioners state that to determine whether a carrier is discriminating in violation of 47 U.S.C.A. Section 202(a), one must employ a three step inquiry: (1) whether the services are "like," (2) if they are, whether there is a price difference between them; and (3) if there is, whether that difference is reasonable. *Competitive*

*Telecommunications Association v. FCC*, 998 F. 2d 1058, 1061 (D.C. Cir. 1993). Again, based on the testimony as cited above, and as is cited in Order No. 2001-1036, we believe that there is “reasonable discrimination” under the present scenario, when viewing it under the Federal standard. Frankly, we believe that there is little difference between this standard and the standard in the preceding paragraph concerning whether or not there is a good reason for a price differential between similarly situated customers. However, employing the standard as shown in the *Competitive Telecommunications Association* case, the services to the business customers involved are certainly “like,” and there is a price difference between them. As we have held previously, that difference is reasonable under the circumstances of this case. Clearly, BellSouth has lost anywhere from 20% to nearly 25% of its market share in South Carolina and it is continuing to lose market share at a steadily increasing rate. See Sellman testimony. Further, BellSouth must be able to compete to win back customers lost to competition. Thus, the Win Back Promotion fulfills the criteria set out by the Federal case law.

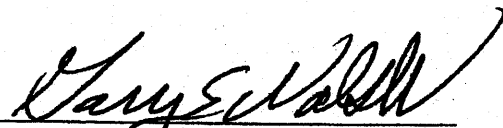
Accordingly, the Petition of the Joint Petitioners is granted in part as described above, and the remainder of the Petition is denied as further described above.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Executive Director

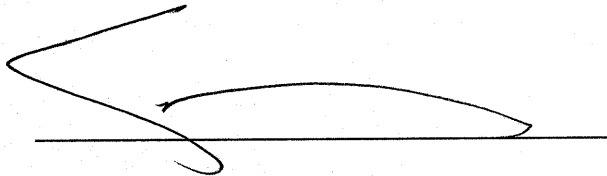
(SEAL)

**CERTIFICATE OF SERVICE**

I hereby certify that on January 31, 2003, a copy of the foregoing document was served on the parties of record, via the method indicated:

- ☒ Hand  
☐ Mail  
☐ Facsimile  
☐ Overnight

Henry Walker, Esquire  
Boult, Cummings, et al.  
414 Union Street, #1600  
Nashville, TN 37219-8062

A handwritten signature in black ink, appearing to read "Henry Walker", is written over a horizontal line.